Supreme Court, U.S.
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NO. 99-178

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1998

VIRGINIA MORTGAGE CO.,
Petitioner,

Vs.

UNITED STATES OF AMERICA
And HAROLD MILHOLEN
D/b/a/ THE BASIC GROUP
Respondents.

On Petition for Writ of Certioari
To The United States Supreme Court

RESPONDENTS BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Can a Citizen unilaterally file what is purported to be a "Federal Common Law Lien and Writ of Attachment" with the Register of Deeds and obtain an interest in the real property of another sufficient to withstand a motion for summary judgment in any action that requires an ownership or lien interest to have standing?

II. Can "Temporary Staff Shortages" constitute "Excusible Neglect under Federal Rule of Civil Procedure 6(b)(2)?

III. Can a District Court grant a Motion to Dismiss for Lack of Jurisdiction against petitioners who lack standing for failure to have an ownership interest in the property that is subject of the litigation.?

LIST OF PARTIES

All parties are listed in the caption on the cover page. The writer of this brief must point out that the petitioner has failed to join the owner of a ½ undivided interest in the subject property.

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The opinion of the Court of Appeals issued in support of its judgment is unpublished, per curiam, but reported as *Virginia Mortgage Company v. United States of America; Harold Milholen, a/k/a The Basic Group*, 1999 US App. LEXIS 4809 (March 22, 1999) and is reprinted in the Petition for Writ of Certiorari.

The Opinion of the District Court is reported as *Virginia Mortgage Co., v. United States of America, and Harold Milholen, d/b/a/ The Basic Group*, 1998 U.S. Dist. LEXIS 13359; 82 A.F.T.R. 2d (RIA) 6036 (August 12, 1998) and is reprinted in the Petition for Writ of Certiorari

JURISDICTION

The opinion of the Court of Appeals in this case was filed on March 22, 1999. Although this respondent was not timely served with the filing to the US Supreme Court, upon inquiry with the Court Clerk, this respondent believes the petition was timely and that the Court has jurisdiction to review this matter. This respondent does not believe that the United States Courts have jurisdiction of the Petitioners claim as the petitioner lacks any ownership interest and therefore lacks standing.

STATUTES AND RULES INVOLVED

This case involves application of the following statutes and rule all of which are set out in the Petition for Certiorari except 28 USC 2410 and the relevant NC Statutes, which are set out below: 26 USC Sec. 6321; 26 USC Sec. 6322(a) and (b); 26 USC Sec.

6335; 28 USC 2410; G.S. 22-2; G.S. 44-38; G.S. 44A-12; G. S. 47-18; G. S. 47-20; G.S. 47-20.1; G.S. 66-68; and Fed R. Civ. P. 6(b)(2).

28 USCS 2410(a).

Under the conditions prescribed in this section and section 1444 of this title for the protectio of the United States, the United States may be named a party in any civil action or suit in any district court or in any state court having jurisdiction of the subject matter --

(1) to quiet title to,
(2) to forclose a mortgage or lien upon,
(3) to partition,
(4) to condem, or
(5) of interpleader or in the nature of interpleader with respect to,

real or personal property on which the United States has or claims a mortgage or other lien.

G.S. 22-2. Contract for sale of land; leases.

All contracts to sell or convey any lands, tenements or hereditaments, or any interest in or concerning them, and all leases and contracts for leasing land for the purpose of digging for gold or other minerals, or for mining generally, of whatever duration; and all other leases and contracts for leasing lands exceeding in duration three years from the making thereof, shall be void unless said contract, or some memorandum or note thereof, be put in writing and signed by the party to be charged therewith, or by some other person by him thereto lawfully authorized.

G.S. 44-38 Claim of lien to be filed; place of filing.

All claims shall be filed in the office of the clerk of superior court in the county where the labor has been performed or the materials furnished, specifying in detail the materials furnished or the labor performed, and the time thereof. If the parties interested make a special contract for such labor performed, or if such material and labor are specified in writing, in such cases it shall be decided agreeably to the terms of the contract, provided the terms of such contract do not affect the lien for such labor performed or materials furnished.

G.S. 44A-12 Filing Claim of Lien

(a) Place of Filing. - All claims of lien against any real property must be filed in the office of the clerk of superior court in each county wherein the real property subject to the claim of lien is located. The clerk of superior court shall note the claim of lien on the judgment docket and index the same under the name of the record owner of the real property at the time the claim of lien is filed. An additional copy of the claim of lien may also be filed with any receiver, referee in bankruptcy or assignee for benefit of creditors who obtains legal authority over the real property.

G.S. 47-18(a) Conveyances, contracts to convey, options and leases of land.

(a) No (I) conveyance of land, or (ii) contract to convey, or (iii) option to convey, or (iv) lease of land for more than three years shall be valid to pass any property interest as against lien creditors or purchasers for a valuable consideration from the donor, bargainor or lessor but fro the time of registration thereof

in the county where the land lies, or if the land is located in more than one county, then in each county where any portion of the land lies to be effective as to the land in that county.

GS 47-20 Deeds of trust, mortgages and conditional sales contracts, effect of registration.

No deed of trust or mortgage of real or personal property, or of a leasehold interest or other chattel real, or conditional sales contract of personal property in which the title is retained by the vendor, shall be valid to pass any property as against lien creditors or purchasers for a valuable consideration from the grantor, mortgagor or conditional sales vendee, but from the time of registration thereof as provided in this Article; provided however that any transaction subject to the provisions of the Uniform Commercial Code is controlled by the provisions of that act and not by this section.

GS 47-20.1 Place of registration; real property.

To be validly registered pursuant to G.S. 47-20, a deed of trust or mortgage of real property must be registered in the county where the land lies, or if the land is located in more than one county, then the deed of trust or mortgage must be registered in each county where any portion of the land lies in order to be effective as to the land in that county.

GS 66-68 (a)

Unless exempt under subsection (e) hereof, before any person or partnership engages in business in

any county in this State under an assumed name or under any designation, name or style other than the real name of the owner or owners thereof, before any limited partnership engaged in business any county in this State other than under the name set out in the Certificate filed with the Office of the Secretary of State or before a corporation engages in business in any county other than under its corporate name, such person, partnership, limited partnership, or corporation must file in the office of the register of deeds of such county a certificate giving the following information: (1) The name under which the business is to be conducted; (2) The name and address of the owner, of if there is more than one owner, the name and address of each.

STATEMENT OF THE CASE

This is an action filed by the petitioner on October 24, 1997 (Record, Doc. 1) in what is purported to be a Quiet Title Action pursuant to 28 USC 2410 (a) and for damages pursuant to 26 USC 7433. For the first time through its statements in its Petition for Writ of Certiorari, Petitioner seeks to bring this action under the guise of 26 USC 7426. Respondent has maintained from his beginning brief's that an action brought under 28 USC 2410 (a) was for the taxpayer and that the case was brought under the wrong section of the code. The real crux of this case was not whether Petitioner had an ownership interest in the property (it is clear it did not) but whether Petitioner could unilaterally file what is purported to be a "Federal Common Law Lien and Writ of Attachment" that was not signed by the property owner and was not perfected or adjudged by any judicial official to obtain a lien holder interest in the property that would allow an action for proceeds under 26 USC Sec. 7426.

In its unverified complaint, petitioner contends to have an "ownership interest" in the Real Property and to have "purchased"

the Real Property that is a subject of this action on August 5, 1996. (Comp. Sec. IX (a) and (b) Page 5) (Record Doc. 1). The property that is subject to this action was originally owned by N & S Vending Service, Inc., and was seized by the Internal Revenue Service and sold on May 29, 1997 to Basic Machinery Company, Inc. as is shown by the exhibit attached to the affidavit of William Milholen. (Record Doc. 9) Defendant Milholen has made a diligent search of the Records of Chatham County, N.C. and has found only one document on record between the petitioner and N & S Vending Service, Inc., prior to and after the seizure by the Internal Revenue Service. The document entitled "Federal Common Law Lien and Writ of Attachment" is dated August 5, 1996, the same date that petitioner alleged it purchased the property and is attached to the affidavit of Wade H. Paschal. (Record Doc. 8) This document is not signed by any officer or employee of N& S Vending Service, Inc. The document purports to be "To secure Investment and Repayment of Loan." The document is not under seal. If the document is a lien, the lien was not perfected by bringing an action to enforce the lien under G. S. 44A-13 within the time required by said Statute. (Paschal Affidavit Attachment, Record Doc 8) If the document is a Mortgage, the petitioner has not brought this procedure in accord with 26 USC 7426 giving a right to a civil action by a person other than the taxpayer. (Although it is now attempting for the first time to propound this theory.)

The action filed by the petitioner in this matter is a result of what is purported to be a federal common law lien and writ of attachment. (Paschal Affidavit Attachment, (Record Doc. 8). This document is a concept of the anti government group known as the FREEMEN and is circulating among various persons and on the internet and has been filed in several North Carolina counties (including Chatham and Randolph) in the identical form as that attached to the affidavit of Wade H. Paschal. The writer of this brief believes that the document is being used Nationwide. The document carries only the signature of the petitioner and no signature of any property owner. There is no basis in law or equity for petitioner to claim an ownership interest in the property and no other documents are of record giving petitioner any

ownership interest in the subject property. Without an ownership interest in the property, petitioner has no standing to bring this action under 28 USC 2410 (a)

Procedurally, the defendant Milholen filed various motions to dismiss on 12/24/97. District Court Opin. P. 2, (Record Doc. 5) Petitioner failed to file any response to the motions by defendant Milholen and the court could have decided these motions as unopposed motions pursuant to local rules but on February 26, 1998, the Court converted the motion of defendant Milholen to one for summary judgment and allowed Petitioner until April 1, 1998 to respond with evidence of its ownership interest in the property. District Court Opin. p. 2 (Record Doc. 12). On April 1, 1998 Petitioner filed its first response to the motions of 12/24/97 (Record Doc. 18). Attached to this response was a "Declaration" by Thomas E. Tilley that did not meet the requirements of a sworn document pursuant to Rule 56(e) of the Federal Rules of Civil Procedure. On April 9, 1998, Defendant Milholen filed a reply brief. (Document Doc. 19).

On August 12, 1998, the district court granted Defendant Milholen's motion after determining that no admissible evidence was offered by Petitioner to support an ownership interest in the property and that Petitioner had no standing to bring this action without an ownership interest. (District Court Opin. P. 2-6, 10).

The matter was timely appealed by the Petitioner to the Fourth Circuit Court of Appeals and the matter was affirmed by the Fourth Circuit Court of Appeals in an unpublished, per curium decision stating that summary judgment was properly granted against the petitioner in favor of Milholen as the Petitioner had failed to show an ownership interest in the property and that the action against the United States of America was properly dismissed as an unopposed motion. (Court of Appeals Decision Appendix A of Petitioner)

ARGUMENT

THE DISTRICT COURT PROPERLY GRANTED SUMMARY JUDGMENT TO DEFENDANT MILHOLEN.

The district court granted summary judgment for Milholen due to petitioners failure to bring forth any evidence recognized under N.C. Law to indicate an ownership interest in the property. (District Court Opinion, p. 6) After converting Milholen's 12(b)(6) motion to dismiss to one for summary judgment, petitioner offered no admissible evidence that conformed to the requirements of Rule 56(e) of the Federal Rules of Civil Procedure. (Record Doc. 18) Milholen produced evidence attached to his motion to dismiss that indicated that the only document of public record in Chatham County regarding this action was a document purporting to be a "Federal Common Law Lien and Writ of Attachment" (Paschall, Record Doc 8) The court made its decision upon review of the file and the lack of any evidence produced on the part of the petitioner to support its ownership interest in the property. Petitioner's sole assertions include an unverified complaint and unsworn declaration that it purchased the property and funds were tendered. Affidavits which are inadequate under Rule 56(e) must be disregarded. G.D. Searle & Co. v. Chas. Pfizer & Co., 231 F2d 316 (1956 CA7) As a matter of law, and upon the evidence produced, petitioner produced no admissible evidence to withstand summary judgment.

PETITIONER'S OWNERSHIP INTEREST

Even if the Court allowed the Tilley Declaration, the petitioner could not have prevailed as petitioner had no interest in the subject property.

There is no non-possessory interest in real property in North Carolina that can be held absent a writing signed, sealed, and

delivered by the transferor, a probated testamentary transfer, acquisition by and through intestate succession, or a judicially or statutorily declared and perfected lien. (Since petitioner has provided no evidence of any possessory interest nor alleged any possessory interest, and this matter does not involve a testamentary transfer or intestate succession, this discussion will not include possessory leasehold interests or transfers upon death.) Any interest that petitioner could have in the subject property must be derived from a writing signed, sealed and delivered by the property owner or a judicially or statutorily perfected lien claimant.

The document of title that was recorded on August 5, 1996 does not comply with any of the prerequisite laws of North Carolina to allow petitioner to acquire any property interest. Discussion will need to follow distinct principals of North Carolina Real Property Law and Lien Law and the petitioner's lack of compliance as follows:

1) The Statute of Frauds, **G.S. 22-2.** It has been said

> "There is no stake for which men will play so desperately. In man and nations there is an insatiable appetite for lands, for the defence or acquisition of which money, and even blood, sometimes are poured out like water. The evidence of land title ought to be as sure as human ingenuity can make it. But if left in parol, nothing is more uncertain. Whilst the temptations to perjury are proportioned to the magnitude of the interest. The infirmity of memory, the honest mistakes of witnesses, and the misunderstanding of parties, these are all elements of confusion and discord which ought to be excluded." Woodward, J. in Moore v. Small, 19 Pa. St. 461 (1852).

The Statute of Frauds in North Carolina requires that instruments conveying lands shall be void unless in writing and signed by the party to be charged therewith or by some other person by him

thereto lawfully authorized. G.S. 22-2. The signature may be that of the grantor himself or it may be written by his agent in his presence or under his direction. Devereaux v. McMahon, 108 N.C.134, 12 S.E. 735 (1888). If an agent, however, signs or executes a deed for his principal who is not present, such agent's deed or signature on behalf of his principal is not valid to pass title to real property purportedly conveyed unless the agent has been given authority under seal to act for his absent principal. Kime v. Brooks, 31 N.C. 218 (1848) Bank v. Wimbish, 192 N.C. 552, 135 S.E. 452 (1926). In this matter, the only document of record is a purported "Notice of Federal Common Law Lien Writ of Attachment on Real & Personal Property." (Paschal Affidavit Record Doc 8) This instrument is not signed by the then owner of the property, N & S Vending Service, Inc. and in accord with the affidavit of Wade H. Paschal, Jr. attached to defendants motions, there were no other documents on record with the register of deeds of Chatham County that would give petitioner authority under seal to sign the name of N & S Vending Service, Inc. Defendant Milholen is unsure what significance this document has as it is certainly not a deed, does not meet the requirements of any conveyance of interest in real property, and even purports to be "To secure investment & Repayment of Loan." At best it is some type of improperly executed mortgage on the property which is the premise for the procedure under 26 USC 7426 giving a right of action to other than the taxpayer. (Petitioner now attempts to convert its action to one under 26 USC 7426 but an examination of the pleadings will indicate this has first appeared in the Petition for Writ of Certiorari)

Defendant Milholen respectfully suggest that the Court was in error in its statement (District Court Opinion p. 6, fn. 2) that the Statute of Frauds is unavailable as a defense to a litigant who was not a party to the contract in question. Normally the defense of the Statute of Frauds is personal to the parties of the contract and is not available to stangers to the agreement; however, any person against whom enforcement of the contract is sought may plead the statute of frauds against a contract voidable under the statute of frauds. Davis v. Lovick, 226 N.C. 252, 37 S.E. 2d 680 (1946) (*rev. on other grounds,* by Kent v. Humphries, 303 N.C. 675, 281 S.E. 2d 43 (1981). Just as an assignee of any contract can

generally plead the defenses of his assignor, the successor in interest in any transferred interest should be able to plead the defenses of his predecessor. In this instance, petitioner seeks to plead some unknown oral transaction or the document dated August 5, 1996 (Paschal Affidavit, Record Doc. 8) to defeat the title to real property conveyed to Milholen. Milholen qualifies as "any person to whom enforcement of a purchase contact is sought" and ought to be allowed to plead the defense in his own right or as a successor in interest to the rights of N & S Vending Service, Inc.

2). Requirement of a Seal: A seal is absolutely essential to the validity of an instrument to convey title to real property in North Carolina. Strain v. Fitzgerald, 128 N.C. 396, 38 S.E. 929 (1901). A corporate seal is a necessary prerequisite to a valid conveyance of real estate by a corporation. Investors Corp. v. Field Financial Corp, 5, N.C. App. 156, 167 S.E. 2d. 852 (1969). The document "Notice of Federal Common Law Lien Writ of Attachment on Real & Personal Property." Paschal Affidavit, Doc. 8) contains no seal whatsoever for either Virginia Mortgage Company or for N & S. Vending Service, Inc.. As a consequence, there is no conveyance of title by this instrument. There is no other instrument of record to evidence Petitioner's "Purchase" of the property.

3). The Connor Act and Notice: At common law, priorities as between successive claimants of real property was that prior in time was prior in right. In 1885, North Carolina enacted its recording statutes known as the Connor Act. GS 47-18, GS 47-20. These statutes, known as "pure race statutes" protect any purchaser for value of specific land who records first, whether he has notice of a prior unrecorded conveyance or not, and irrespective of whether he is a prior or subsequent purchaser. Bourne v. Lay & Co., 264 N.C. 33, 140 S.E. 2d. 769 (1965). To be validly recorded, deeds, deeds of trust, mortgages, and contracts relating to real property must be registered in the office of the Register of Deeds in the county where the land lies. G.S. 47-18, G.S. 47-20.1. In other words, if a conveyance is not recorded in the office of the Register of Deeds of the County

where the land is located by a grantee, it is considered absolutely void with respect to purchasers for value, such as defendant Milholen, who record their conveyances. The famous quote from Bourne v. Lay & Co., *id*, is "No notice, however full and formal, will supply the want of registration of a deed." Of course, a purchaser for value is one who pays consideration that is more than merely nominal. King v. McRackan, 168 N.C. 621, 84 S.E. 1027 (1915). Defendant Milholen derived his ½ undivided interest from Basic Machinery Company, Inc. A copy of the Deed from the IRS was attached to the Affidavit of William Milholen (Record Doc. 6) indicates value paid to the IRS in the sum of $361,000.00. It is clear that the predecessor in title to Defendant Harold Milholen was a purchaser for value. Of course, petitioner has still not produced any valid document of title from N & S Vending Service, Inc., thus making this argument merely academic. It is further clear that a defective instrument, even if recorded, imparts no constructive notice to a prospective purchaser. Hi-Fort Inc., v. Burnette, 42 N.C. App. 428, 257 S.E. 2d 85 (1979).

4). **Leins:** In North Carolina, liens in the property of others may be acquired by Judgment Lien, Statutory Lien or by Contract. There is no such thing in N.C. or anywhere else as a Common law Lien. In this matter, there is no indication that Petitioner claims a Judgment Lien or that a Judgment lien is filed with the Clerk of Court in Chatham County. (Paschal Affidavit Record Doc. 8). There is also no indication that any action has been filed to claim a statutory lien or that any action has been filed to perfect any statutory lien. (Paschal Affidavit Doc. 8) In North Carolina, Statutory liens are contained in G.S. Chapters 44 and 44A. Both Chapters require that any claimed statutory lien be filed with the Clerk of Court. G.S. 44-38 and G.S. 44A-12. Both Chapters also require the claimant to bring judicial action to perfect the lien within 180 days or 6 months depending on the Chapter. G.S. 44-48(4) and G.S. 44A-13.

The creation of a lien by contract (deed of trust or mortgage) on real property is a conveyance and must meet all of the requirements for transferring of land. Daniel Boone Complex,

Inc., v. Furst, 43 N.C. App. 95, 258 S.E. 2d 379 (1979). Just as the document involved does not qualify as a deed, it similarly does not qualify as a mortgage lien or deed of trust. The document is not sealed or signed by the owner of the property. There is some evidence that the document is an unperfected lien in that the document states it is "to secure investment and repayment of loan." (Paschal Affidavit, Record Doc. 8) If this is the case, both defendants were entitled to ignore the document.

PETITIONER HAS NOT COMPLIED WITH NORTH CAROLINA LAW BY FILING OF A CERTIFICATE OF ASSUMED NAME WHICH IS A PREREQUISITE TO JURISDICTION IN THIS MATTER.

North Carolina Law requires an unincorporated association, prior to gaining the privilege of instituting a legal action in its common name to record the necessary information required by G.S. 66-68 and then it must allege the specific location of such recordation. In this matter, Virginia Mortgage Company is not a Corporation and according to the complaint is a common law trust. No such document is filed and this action should be dismissed for lack of jurisdiction. (Paschal Affidavit, Record Doc. 8) *See* Cherokee Home Demonstration Club. V. Oxendine 100 N.C. App. 622, 397 S.E. 2d 643 (1990), and Highlands Township Taxpayers Association v. Highlands, 62 N.C. App. 537, 303 S.E. 2d 234 (1983).

Petitioner alleges that it has pendant or supplemental jurisdiction on its claim against the United States of America to bring in Defendant Milholen. Defendant Milholen questions the standing and thus the jurisdiction of the court for petitioner to bring its action against the USA under 28 USC 2410 due to no ownership interest in the subject property. Defendant Milholen further states that even if supplemental jurisdiction allows a claim against him, that any claim against him does not involve a "substantial right existing under the Constitution or laws of the United States." Therefore, compliance with G.S. 66-68 is mandatory prior to any action against the defendant Milhollen. Defendant Milholen will bring a counterclaim for slander of title against the persons who

comprise Virginia Mortgage Company if this action is not upheld. Without being able to determine who Virginia Mortgage Company is, the efforts and relief of defendant Milhollen could be frustrated as a judgment would be unenforceable against the unknown persons who make up the association.

PETITIONERS STANDING TO CHALLENGE THE USA

When someone other than the taxpayer claims an interest in property or rights to property which the United States has levied upon, his exclusive remedy against the United States is a wrongful levy action under 26 USC 7426. United Sand and Gravel v. US, 624 F.2d 733 (5th Cir. 1980).

The petitioner is not an owner of the property and does not have any standing to bring an action under 28 USC 2410. In the case of Winebrenner v. U.S., 924 F.2d 851 (1991 CA-9-Cal), the court held that when the IRS levies upon property to satisfy unpaid tax liabilities and a non-taxpayer claims he has an interest in the property superior to the IRS, 28 USC 2410 is subordinate to 26 USC 7426; therefore, the third party must bring a wrongful levy action and may not file suit seeking a quiet title order.

Based upon the documents of record, Petitioner has no ownership interest whatsoever in the property and no lien or perfected lien on the property. If a claim is obviously without merit, the court may dismiss for want of jurisdiction. Nolan v. Meyer 520 F.2d 1276, cert den. 423 US 1034, 46 L.E. 2d 408 (1975, CA2 NY).

The very essence of the petitioner's complaint is that petitioner has some ownership interest in the land that is the subject of this complaint. Petitioner contends that it "purchased" the property on August 5, 1996 from N & S Vending Service, Inc. The only document on the public record in the Register of Deeds from Chatham County is the document entitled "Notice of Federal Common Law Lien and Writ of Attachment",(Paschal Affidavit, Record Doc. 8). As a matter of law, this document is not sufficient to bestow to petitioner any ownership interest in the property as it is not signed by the prior owner. In addition, there

have been no proceedings in the Courts for Chatham County regarding this property as between the petitioner and N & S Vending Service, Inc. Without any documents of title, petitioner has no standing to complain of the procedural requirements of 26 USC 6335 et. seq.

CONCLUSION

Whatever petitioner has, it clearly is not any perfected or enforceable interest in the subject property. Petitioner's own pleadings assert different positions:

a) "Purchased" Complaint, Record Doc. 1)(Petition p 4.)
b) "Purchased ..... and funds were tendered" (Record Doc. 18)
c) Discussion of Judgment Lien and Second Mortgages "intangible non-possessory interest" (Appellants Brief, Page 110, Petition p. 9)
d) "Petitioner's lien was a property interest" (Appellants Brief, Page 26)

General conclusory allegations unsupported by facts are insufficient to constitute a cause of action and where claims in the complaint are insufficiently supported by factual allegations, these claims may be properly disposed of by summary dismissal. Harper v. U.S., 423 F Supp. 192 (DC SC 1976). Where it appears that the petitioner would not be entitled to relief under any set of facts which could be proved in support of the claim, the claim should be dismissed. Hathaway Motors, Inc., v. General Motors Corp., 18 FRD 283 (1955 DC Conn). Since the purpose of Rule 12(b)(6) is to provide defendant with a mechanism for testing the legal sufficiency of the complaint, self-serving, inaccurate legal conclusions cannot rescue a factually deficient complaint from dismissal. Falkner Advertising Associates v. Nissan Motor Corp., 945 F. 2d 694 (1991 CA 4 MD).

In this instance, the complaint refers to a purchase on August 5, 1996 and the affidavit of Wade Paschal provides the only document on record in the Registry of Chatham County, the

location of the property, which also happens to have a date of August 5, 1996. The court on examination of this document can conclude that the petitioner can not prove his case under any set of circumstances and that under this document petitioner has no ownership interest of any kind that is recognized under the laws of this State. Without any ownership interest, petitioner's claim is defective and should be dismissed.

The bottom line is that petitioner has no ownership interest recognized under N.C. Law and as such lacks standing to bring this action. Only the taxpayer may bring the action petitioner seeks to bring. Having produced no evidence of ownership other that a broad allegation that it "purchased" the property, summary judgment was properly granted in favor of the defendant Milhollen.

Should the Court Grant a Writ of Certiorari for this case?

There is great need to have a Court of your stature declare that there is no such thing as a Federal Common Law Lien and that the filing of such a document is tortuous as a slander on the title to real property. When a person or entity can unilaterally file a document against another citizen and effectively "lock up" all of the real property owned by the person (title companies will not insure and banks will not loan), all without resorting to any right to be heard or object to the same, then there could be great disruption in our society involving the sale of real property and the use of the property for collateral. Such tactics and concepts are being promoted by those known as the Freemen. There is no law on the subject and each time the tactic is used, innocent property owners could be subjected to great amounts of judicial process to remove a cloud on real estate titles. While this author believes the law is abundantly clear and that you should not allow Certiorari in this instance, the impact of these tactics will at some point need to be addressed by the judiciary.

Respectively Submitted this 25 day of August, 1999.

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that two true and correct copies of the foregoing document was placed in the United States Mail, postage prepaid, on this the 25 day of August, 1999, and addressed as follows:

Norman B. Smith
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